



DEPARTMENT OF LAW
OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

June 15, 1978

Mr. William A. Jamieson, Director
Department of Economic Security
1717 West Jefferson
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 78-114 (R77-371)

Dear Mr. Jamieson,

This is in response to a letter of November 17, 1977 from your predecessor, Mr. Ed Crowley, requesting our opinion whether housekeepers employed by the Department of Economic Security may be paid for work in excess of eight hours per day and in addition if they may be paid in excess of forty hours per week.

Article 18, § 1 of the Arizona Constitution states:

Eight hours and no more, shall constitute a lawful day's work in all employment by, or on behalf of the State. The Legislature shall enact such laws as may be necessary to put this provision into effect, and shall prescribe proper penalties for any violation of said laws.

The Supreme Court has held that "This constitutional provision is not self-executing" and could not be implemented unless specifically authorized by the Legislature. City of Phoenix v. Yates, 69 Ariz. 68, 73 (1949).

The Legislature in 1956 chose to implement Article 18, § 1 of the Constitution for a limited class of people by enacting A.R.S. § 23-391. However, on May 31, 1978, A.R.S. § 23-391 was repealed and Title 23 of the statutes was amended by adding a new section 23-391 (Ch. 104, Laws 1978).

The new section provides that subject to availability of appropriated funds and employee position eligibility as provided for in the new law, an employee of the state or any political subdivision thereof, may receive overtime

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compensation for work in excess of such person's normal work week at a rate of either one and one-half times the regular rate at which such person is employed or at one hour of compensatory time off for each hour worked, in lieu of such monetary payment.

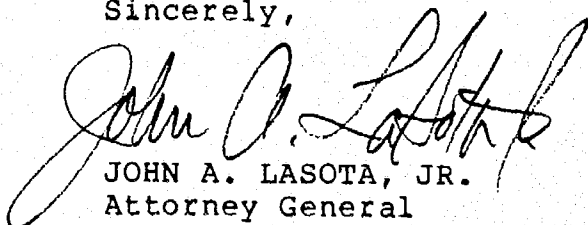
The positions which are eligible to receive such overtime shall be determined by the State Personnel Board, the Board of Regents, the State Community College Board of Directors, the Board of Directors for the School for the Deaf and Blind or the governing body of a political subdivision.

The determination of whether housekeepers employed by the Department of Economic Security are eligible to receive compensatory time or payment for overtime work will now depend upon the classification of such employees under the new statute by the State Personnel Board.

We have asked the Personnel Division when they expect to adopt appropriate classifications under the new law. Their intent is to do so immediately pursuant to the emergency rule adoption procedures outlined in A.R.S. § 41-1001 et seq. We suggest that you provide information to the Board with regard to the classification of housekeepers.

If you require further information, please contact us.

Sincerely,



JOHN A. LASOTA, JR.
Attorney General

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